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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,459	09/10/2003	Gregory P. Gorman	10930.00128	7075

22908 7590 06/07/2004  
BANNER & WITCOFF, LTD.  
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CHICAGO, IL 60606

EXAMINER
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SANDY, ROBERT JOHN

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/659,459	<b>Applicant(s)</b> GORMAN ET AL.	
	<b>Examiner</b> Robert J. Sandy	<b>Art Unit</b> 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-5 is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,637,075. Although the conflicting claims are not identical, they are not patentably distinct from each other because recitation of:

"a first U-shaped clip member including first and second spaced legs joined at one end by a connecting crown" is an obvious alternative phrase to "a U-shaped first clip member having first and second spaced legs and a connecting crown" of the '075 patent, as claimed common subject matter;

"each leg having an opposite free end with an inside, said insides of side free ends of said legs spaces a first distance" is an obvious alternative phrase to "first and second spaced legs and a connecting crown, each of said legs having a leg end; said legs having leg ends spaced a first distance" of the '075 patent, as claimed common subject matter;

"a deformable, plastic material, whereby the first clip member may be strained to form a generally closed loop shape having the legs arranged in an overlapping array with the leg ends extending in generally opposite directions" is an obvious alternative phrase to "a plastic material, whereby the first clip member may be strained to form a generally closed loop shape having the legs arranged in overlapping, side by side array," of the '075 patent, as claimed common subject matter, where the "plastic material" is inherently "deformable" when it

undergoes straining, and recitation of "the leg ends extending in generally opposite directions" of the instant application is the same claimed subject matter of in the '075 patent claiming "by directing one leg end through the through passage from one side and the other leg end from the opposite side";

"a leg retention member" is an obvious alternative phrase to "a leg locking member for engaging and retaining the legs" of the '075 patent, as claimed common subject matter;

"a block with first and second, spaced opposed sides and with a through passage between the opposed sides, said through passage defining openings on the opposite sides of the retention member, said openings spaced a second distance no greater than the first distance, said through passage sized and shaped to accommodate movement of the leg ends there through upon positioning the first and second free leg ends into openings respectively on opposed sides of the retention member and plastically deforming the first and second legs in overlapping array to thereby retain material gathered between the legs" is an obvious alternative phrase to "a block with a through passage, said block having first and seconds generally parallel, opposite sides with the through passage extending between the sides, said sides spaced a second distance no greater than the first distance, said through passage having a cross sectional configuration to accommodate and retain the legs in side by side strained array by directing one leg end through the through passage from one side and the other leg end from the opposite side" of the '075 patent, as claimed common subject matter; and

"at least one of the members is a polymeric material" is an obvious alternative phrase to "the first clip member and locking member are comprised of polymeric material" of the '075 patent, as claimed common subject matter.

#### *Allowable Subject Matter*

Claims 3-5 are allowed.

The following is an examiner's statement of reasons for allowance: concerning claims 3-5, the prior art of record fails to teach or suggest a method for retaining gathered material by the steps of applying a two member clip construction to the gathered material, positioning a retention member in alignment with the clip member by orienting the retention member with the openings aligned for receipt of the leg members; directing first and second leg members of the

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clip member respectively into opposed side openings of the retention member; and plastically deforming the leg members to encircle the gathered material, where the clip construction has the structural combination of: a first U-shaped clip member including first and second spaced legs joined at one end by a connecting crown, each leg having an opposite free end with an inside, the insides of the free ends of said legs spaced a first distance, the first clip member formed from a deformable, plastic material, whereby the first clip member may be strained to form a generally closed loop shape having the legs arranged in an overlapping array with the leg ends extending in generally opposite directions; and a leg retention member for engaging the legs, the retention member comprising a block with first and second, spaced opposed sides and with a through passage between the opposed sides, the through passage defining openings on the opposite sides of the retention member, the openings spaced a second distance no greater than the first distance, the through passage sized and shaped to accommodate movement of the leg ends therethrough upon positioning the first and second free leg ends into openings respectively on opposed sides of the retention member and plastically deforming the first and second legs in overlapping array to thereby retain material gathered between the legs by positioning the gathered material between the first and second leg members of the clip member.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Sandy whose telephone number is 703-305-7413. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**ROBERT J. SANDY**  
**PRIMARY EXAMINER**